

U.S. Serial No. 10/709,019  
Filed: April 7, 2004  
Group Art Unit: 3732  
Examiner: Reimers, Annette R  
Docket No.: 101896-0245

### REMARKS

The pending Office Action addresses claims 1-50. Claims 1-6, 8-10, 13, 15-29, 31-34, and 36-40 stand rejected. Claims 11, 12, and 40 are objected to. Remaining claims 7, 14, 30, 35, and 41-50 are withdrawn from consideration.

#### *Amendments to the Claims*

Claim 37 is amended to include the limitations of claims 38 and 40, which are now cancelled. Claim 39 is amended to depend from claim 37, rather than cancelled claim 38. No new matter is added.

Applicants also cancel withdrawn claims 41-50. Applicants reserve the right to pursue these claims in a divisional application.

#### *Allowable Subject Matter*

The Examiner has indicated that claims 11, 12, and 40 would be allowable if rewritten into independent format to include all of the limitations of the base claim and any intervening claims. As noted above, independent claim 37 is amended to include the limitations of claims 38 and 40. This amendment is believed to obviate any rejections over independent claim 37, which is now in condition for allowance. Accordingly, only claims 1-6, 8-10, 13, 15-29, 31-34, and 36 are addressed below.

#### *Rejections Pursuant to 35 U.S.C. §102*

*(1) U.S. Patent Publication No. 2002/0052603 of Nichols et al.*

Claims 1-4, 6, 8-9, 13, 15-16, 18-22, 24-29, 31-32, 34, and 36 are rejected pursuant to 35 U.S.C §102(b) as being anticipated by U.S. Patent Publication No. 2002/0052603 of Nichols et al. The Examiner argues that Nichols discloses an implantable spinal cross-connector substantially as claimed. Applicants respectfully disagree.

U.S. Serial No. 10/709,019  
Filed: April 7, 2004  
Group Art Unit: 3732  
Examiner: Reimers, Annette R  
Docket No.: 101896-0245

Independent claim 1 is directed to an implantable spinal cross-connector having a central portion with at least one connector member formed on a terminal end thereof. The connector member has first and second opposed jaws, with at least one of the jaws being selectively movable between a first, open position wherein the first and second jaws are positioned a distance apart from one another, and a second, closed position, wherein the first and second jaws are adapted to engage a spinal fixation element therebetween. At least one of the jaws is integrally formed with the central portion. The cross-connector further includes a locking mechanism having a shank that is receivable within a non-expandable bore formed in the connector member. The locking mechanism is adapted to come into contact with each of the first and second jaws to selectively lock at least one of the first and second jaws in a fixed position.

Nichols does not teach a locking mechanism with a shank receivable within a *non-expandable bore* formed in a connector member of a spinal cross-connector. Rather, Nichols uses a camming lug 50 to fix a clamp 42, 44 against a spinal rod (see FIG. 3 of Nichols). When the camming lug is inserted into the reception port of the clamp, the camming lug causes the walls of the port to expand to effect a clamping around the spinal rod. As stated in Nichols in paragraph 48:

In use, rotation of the camming lug 50 within reception ports 46, 48 causes the lateral camming surfaces 52a, 52b to bear against the walls of reception ports 46, 48, urging the walls to expand radially outwardly. In what can best be described as a scissors-like action, the outward expansion of the port walls causes the clamp arms 42a, 42b and 44a, 44b to move inwardly toward one another so as to reduce the size or diameter of the gaps or channels 43a, 43b defined therebetween, respectively. As a result, spinal rods 12 and 14 are compressed tightly between clamp arms 42a, 42b and 44a, 44b, as illustrated, for example, in FIG. 5.

Accordingly, the bore in the connector member of Nichols is expandable. Independent claim 1, and claims 2-4, 6, 8-9, 13, 15-16, 18-22, 24-29, 31-32, 34, and 36 which depend therefrom, therefore distinguish over Nichols.

(2) *U.S. Patent Publication No. 2005/0090821 of Berrevoets et al.*

Claims 1-4, 6, 8-10, 13, 15-16, 18-22, 23-28, 31-32, 34, and 36 are rejected pursuant to 35 U.S.C § 102(e) as being anticipated by U.S. Patent Publication No. 2005/0090821 of Berrevoets et al.

U.S. Serial No. 10/709,019  
Filed: April 7, 2004  
Group Art Unit: 3732  
Examiner: Reimers, Annette R  
Docket No.: 101896-0245

Applicants submit herewith a Declaration of Nam T. Chao pursuant to 37 C.F.R. §1.131. This Declaration establishes that the claimed invention was completed prior to October 22, 2003, which is the earliest priority date that could possibly be claimed by the Berrevoets patent. Accordingly, Berrevoets cannot be relied on as a prior art reference, thereby obviating the basis for the Examiner's rejection.

***Rejections Pursuant to 35 U.S.C. §103***

Claims 5, 17, and 33 are rejected pursuant to 35 U.S.C §103(a) as being unpatentable over U.S. Patent Publication No. 2002/0052603 of Nichols et al. Claims 5, 17, and 33 depend from claim 1 and therefore distinguish over Nichols for the reasons previously discussed. Accordingly, claims 5, 17, and 33 represent allowable subject matter.


Claims 5, 17, and 33 are rejected pursuant to 35 U.S.C §103(a) as being unpatentable over U.S. Patent Publication No. 2005/0090821 of Berrevoets et al. As discussed above, Berrevoets cannot be relied on as a prior art reference.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

Date: December 20, 2005

  
\_\_\_\_\_  
Lisa Adams, Reg. No. 44,238  
Attorney for Applicant(s)

Nutter McClennen & Fish LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210  
Tel: (617)439-2550  
Fax: (617)310-9550

1482098.1